

CIVIL CASE NO. 1:10cv007

Defendant.

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ORDER OF REMAND

Sentence four of 42 U.S.C. §405(g) provides in pertinent part, "[t]he court shall have the power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing." The parties have moved for reversal of the decision of the Defendant and remand for further administrative proceedings.

Specifically, the parties ask that the Court remand this matter and the Appeals Council in turn remand the case to an Administrative Law Judge (“ALJ”) for a new hearing at which s/he will consider the following: The claimant filed a subsequent application and was found disabled March 13, 2009, two days after the hearing decision. In determining the claimant was disabled and in light of the factors to be considered in connection with Social Security Acquiescence Ruling 00-1(4), the State agency medical consultant expressed an opinion that the claimant's impairment was becoming more severe as of March 13, 2009. The fact of the subsequent allowance suggests that new and material evidence exists that relates to the period on or before the date of the Administrative Law Judge's decision.

Upon remand, the Administrative Law Judge will be directed to obtain testimony from a medical expert to assist in the evaluation of the claimant's impairments.

Based on the representations of the parties, the Court finds that reversal and remand are appropriate. Melkonyan v. Sullivan, 501 U.S. 89, 111 S.Ct. 2157, 115 L.Ed.2d 78 (1991).

IT IS, THEREFORE, ORDERED that the Defendant's Assented To Motion for Remand and Entry of Judgement Reversing the Commissioner's

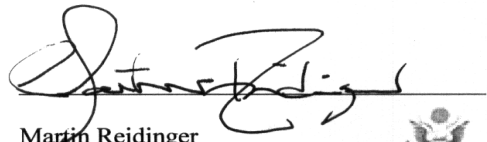
Decision pursuant to Sentence Four of 42 U.S.C. §405(g) [Doc. 11] is hereby **GRANTED**; and

IT IS FURTHER ORDERED that the decision of the Commissioner of Social Security is hereby **REVERSED** and the case is **REMANDED**; and

IT IS FURTHER ORDERED that upon remand, the Appeals Council remand the case to an Administrative Law Judge (“ALJ”) for a new hearing at which Plaintiff will be able to testify and present evidence, that the ALJ consider the subsequent approval of benefits and supporting reasoning as described herein, obtain testimony from a medical expert to assist in evaluating Plaintiff’s impairments, and issue a new decision.

A Judgment of Remand is entered simultaneously herewith. The Clerk of Court is notified that this is a final judgment closing the case.

Signed: November 30, 2010



Martin Reidinger
United States District Judge

